

REMARKS/ARGUMENTS

The claims have been divided into Groups as follows:

- Group I: Claims 42-49, drawn to a process of making a colored and flavored gel capsule.
- Group II: Claims 1-41, drawn to a colored and flavored gel capsule.
- Group III: Claim 50, drawn to an apparatus for making a colored and flavored gel capsule.

Applicants elect, with traverse, Group I, Claims 42-49 (drawn to a process of making a colored and flavored gel capsule), for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: “the common technical feature in all groups is the colored flavored gel capsule. This element cannot be a special technical feature under PCT Rule 13.2 because the element is shown in the prior art. Lewis discloses a colored, with water insoluble natural colors, (lines 39-41, col. 3, ‘039) and flavored (lines 36-38, col. 5, ‘039) gel capsule.”

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims *interpreted in light of the description* was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.”

In addition, The MPEP §806.03 states:

“Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition.”

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I-III with respect to 37 C.F.R. § 1.475(b)(5) and MPEP §806.03. Therefore the burden necessary according to MPEP § 1893.03(d) to sustain the conclusion that the groups lack of unity of invention has not been met.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

Customer Number

22850

Tel. (703) 413-3000
Fax. (703) 413-2220
(OSMMN 08/07)

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon


Justine M. Wilbur

Registration No. 59,678